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8           **UNITED STATES DISTRICT COURT**  
9           **FOR THE WESTERN DISTRICT OF WASHINGTON**  
10           **AT SEATTLE**

11 ROBERT W. MONSTER, an individual, and  
12 ANONYMIZE, INC., a Washington  
13 corporation,

14           Plaintiffs,

15           v.

16           CREATD, INC., a Nevada corporation,

17           Defendant.

18           Case No. 2:21-cv-1177

19           **COMPLAINT FOR**  
20           **DECLARATORY RELIEF**  
21           **JURY DEMAND**

1 Plaintiffs Robert W. Monster, an individual, and Anonymize, Inc., a Washington  
 2 corporation, allege for their complaint against Defendant Creatd, Inc., a Nevada  
 3 corporation, on personal knowledge as to Plaintiffs' own activities and on information and  
 4 belief as to the activities of others, as follows:

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6 **I. Nature of the Controversy**

7 1. This is an action for Declaratory Judgment under 28 U.S.C. § 2201 that  
 8 Plaintiffs' registration and use of the internet domain name VOCL.COM (the "Domain  
 9 Name") does not violate Defendant's rights under the Anticybersquatting Consumer  
 10 Protection Act ("ACPA"), 15 U.S.C. § 1125(d), or otherwise under the Lanham Act, 15  
 11 U.S.C. § 1051 et seq.

12 2. The Domain Name has been locked by the registrar, Epik.com, and is at  
 13 immediate risk of being transferred away from Plaintiffs by, and as a result of, the actions  
 14 of Defendant, which claims trademark rights and certain other rights with respect to the  
 15 term and the domain name VOCL.COM. Plaintiffs seeks a determination by this Court  
 16 that the Plaintiffs' registration and/or use of VOCL.COM is not, and has not been in  
 17 violation of the ACPA, and that Plaintiffs' use of VOCL.COM constitutes neither a  
 18 violation of the ACPA nor trademark infringement or dilution under the Lanham Act.

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20 **II. Parties**

21 3. Plaintiff Robert W. Monster is an individual residing in King County,  
 22 Washington. Monster registered the domain name VOCL.COM with the domain-name  
 23 registrar Epik Inc., which has its principal place of business in Bellevue, Washington.  
 24 Monster is Epik's CEO.

25 4. Plaintiff Anonymize, Inc. is a Washington corporation with its principal place  
 26 of business in Sammamish, Washington. Anonymize is Epik's privacy service for domain-  
 27 name registrations and is listed as the owner of record for the Domain Name. Monster is  
 28 the CEO of Anonymize.

1       5. On information and belief, Defendant Creatd, Inc. is a Nevada corporation  
 2 with its principal place of business in Nevada. Creatd operates a social-media platform  
 3 named “Vocal” located at the domain name vocal.media. Creatd purports to hold a U.S.  
 4 trademark registration for “VOCAL”, Reg. No. 5,438,308.

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### 6                   **III. Jurisdiction and Venue**

7       6. This Court has subject matter jurisdiction over this action under 28 U.S.C.  
 8 § 1331 because the causes of action arise under federal law. Plaintiffs seek a declaration,  
 9 under 15 U.S.C. § 1114(2)(D)(v) and 28 U.S.C. § 2201, that their registration and use of  
 10 the Domain Name does not violate Defendant’s claimed trademark rights.

11      7. This Court has personal jurisdiction over Defendant as it has consented to  
 12 jurisdiction by this Court in Paragraph IX of their complaint with the World Intellectual  
 13 Property Organization (WIPO) in accordance with Paragraph 3(b)(xii) of the Uniform  
 14 Domain Dispute Resolution Policy (UDRP) of the International Committee of Assigned  
 15 Names and Numbers (ICANN).

16      8. Venue in this Court exists as the registrar of the Domain Name, Epik Inc., has  
 17 its primary office in Bellevue, Washington, and under 28 U.S.C. § 1391(b)(2) because a  
 18 substantial part of the events giving rise to the claims alleged in this Complaint occurred  
 19 in this District.

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### 21                   **IV. Factual Background**

22      9. This case involves “reverse domain name hijacking,” which occurs when an  
 23 individual or an entity alleges that it is the owner of a trademark, and asserts spurious  
 24 claims of trademark infringement against the owner of a domain name which is similar or  
 25 identical to the registered trademark. Defendant is attempting to wrest control of  
 26 Plaintiffs’ Domain Name by asserting baseless allegations of trademark infringement,  
 27 dilution, and cybersquatting.

28      10. The domain name VOCL.COM was first registered in 2000.

1       11. From then until March 2021, it was used primarily as a parking page, meaning  
 2 that it was used to display advertisements to generate revenue.

3       12. In September 2020, the Domain Name was sold by its previous owner to  
 4 Ashwin Vikhona. Anonymize's privacy service was listed as the owner of record because  
 5 it held the Domain Name on Mr. Vikhona's behalf.

6       13. On or about March 7, 2021, representatives of Mike Lindell, the CEO of  
 7 MyPillow, contacted Epik and Anonymize seeking to purchase the Domain Name.

8       14. Mr. Lindell intended to use the Domain Name in connection with a new  
 9 social-media service with an emphasis on free speech that he intended to call "VOCL."  
 10 None of Mr. Monster, Anonymize, or Epik ever had any involvement in Mr. Lindell's  
 11 business plans or his intended use of the Domain Name.

12       15. At the time, Mr. Monster, Anonymize, and Epik had never heard of  
 13 Defendant Creatd, its social-media site at vocal.media, or its claimed trademark.

14       16. Mr. Monster negotiated a \$40,000 purchase price for the Domain Name on  
 15 behalf of Mr. Vikhona.

16       17. On March 9, 2020, Mr. Lindell's representatives forwarded \$40,000 to Epik's  
 17 escrow account while his team continued to do due diligence. The funds were distributed  
 18 to Mr. Vikhona (as seller) and Epik (as broker).

19       18. Following receipt of the funds, the Domain Name would have been  
 20 automatically unlocked for Mr. Lindell's use. At or around this time, Mr. Lindell's  
 21 representatives published a website at the Domain Name with a "Coming Soon" banner  
 22 and a link to another of Mr. Lindell's websites.

23       19. Throughout this transaction, the Domain Name continued to be publicly held  
 24 by Anonymize as the listed owner, despite the change to its beneficial owner.

25       20. The same day, Mr. Lindell filed a U.S. trademark application for the word  
 26 mark "VOCL" and shortly thereafter announced to media outlets that his planned new  
 27 social-media service would be named "VOCL."

28       21. On or about March 11, 2021, according to Defendant Creatd, it sent a cease-

1 and-desist letter to Mr. Lindell, claiming that Lindell's announcement of plans to use the  
 2 term "vocl" in connection with a social-media platform "appears to be made with the  
 3 intent to trade on the goodwill associated with Creatd's 'Vocal' mark" and "creates the  
 4 false impression that your services originate from Creatd, or that Creatd is somehow  
 5 connected or associated with your services, so as to deceive customers or to cause  
 6 confusion or mistake as to the origin or affiliation of your and Creatd's services."

7       22. Defendant's cease-and-desist letter further claimed that Mr. Lindell's  
 8 prospective use of "vocl" would "dilute the distinctive quality of the Creatd's famous  
 9 'Vocal' mark" and that the "attempted association of Creatd's trademark with [Lindell's  
 10 planned] services will blur the distinctive character and tarnish the reputation of Creatd's  
 11 registered trademark."

12       23. Defendant's cease-and-desist letter concluded that Mr. Lindell's plan to  
 13 launch a social-media site using the Domain Name constituted "willful trademark  
 14 infringement, false designation of origin, trademark dilution, and cyberpiracy" in  
 15 violation of the Lanham Act.

16       24. The following day, March 12, 2021, Mr. Lindell announced that he would not  
 17 be using the VOCL name, but would instead launch his planned social-media site under a  
 18 different name and using a different domain name.

19       25. Following Mr. Lindell's announcement of the name change, his  
 20 representatives notified Epik that they wished to cancel the purchase of the Domain  
 21 Name. But the transaction had already consummated and the purchase price and broker  
 22 commission had already been distributed.

23       26. As a result of Mr. Lindell's changed plans, the Domain Name no longer held  
 24 value for him, so he sought to sell it.

25       27. Following Mr. Lindell's public abandonment of his intention to use the  
 26 Domain Name in connection with a social-media platform, it was clear to Mr. Monster  
 27 that the Domain Name would not be used in a manner that competed with Defendant's  
 28 social-media site or risked tarnishing or diluting Defendant's alleged mark.

1       28. Because Mr. Lindell was no longer planning to use it, on March 13, 2021, Mr.  
 2 Monster offered to purchase it for \$10,000, which is how the Domain Name came to be in  
 3 Mr. Monster's name.

4       29. Thus, for a total of three days in March 2021, the Domain Name was  
 5 registered to Mr. Lindell behind the Anonymize privacy service.

6       30. Although Mr. Monster was aware at the time of his purchase of the Domain  
 7 Name of the potential dispute between Defendant and Mr. Lindell regarding Mr.  
 8 Lindell's then-planned use of the Domain Name, he did not believe it would affect his  
 9 ownership or use, as Mr. Monster had no plans to use it for a social-media site or in any  
 10 way that would be associated with Defendant or its social-media site or alleged trademark.

11      31. Additionally, given the 20-year history of the Domain Name, Mr. Monster  
 12 believed that it had accrued legitimate rights. In particular, the Domain Name had shown  
 13 a landing page for several years. That is, the initial registrant and all subsequent  
 14 registrants had all passively held the Domain Name for the bona fide and legitimate  
 15 purpose of offering the Domain Name itself.

16      32. When Mr. Monster acquired the Domain Name, he intended to use it in  
 17 essentially the same way as it had been used during that time. This use long predicated  
 18 Defendant's claimed rights in its VOCAL mark.

19      33. Thus, following Mr. Monster's acquisition of the Domain Name in March  
 20 2021, it returned to the same legitimate purpose and use that it had enjoyed for more than  
 21 twenty years prior to Mr. Lindell's brief, tentative, and aborted involvement.

22      34. On April 6, 2021, Defendant filed a Complaint with WIPO against Anonymize  
 23 as the owner of the Domain Name, initiating an arbitration proceeding against in  
 24 accordance with the Uniform Domain Name Dispute Resolution Policy ("UDRP")  
 25 adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN"),  
 26 alleging that it was infringing on and diluting Defendant's trademark for "vocal".

27      35. WIPO accepted the Complaint and the registrar, Epik, locked the Domain  
 28 Name pursuant to the UDRP rules. The Complaint was subsequently amended to

1 identify Mr. Monster as the beneficial owner of the Domain Name.

2       36. On August 16, 2021, the WIPO panelist assigned to the case rendered a  
 3 decision requiring the transfer of the domain name to Defendant. (WIPO case No.  
 4 D2021-1050). As of the date of the filing of this complaint, the Domain Name continues  
 5 to be “locked” pending the transfer of the registration to the Defendant pursuant to the  
 6 UDRP decision.

7       37. The WIPO panelist’s decision requires transfer of the Domain Name despite a  
 8 lack of evidence that it was registered or used in bad faith. The decision even  
 9 acknowledges the lack of evidence of bad faith, noting that none of Plaintiffs’ actions “fit  
 10 easily in the specific examples of bad faith” provided under the UDRP rules.

11      38. Specifically, the WIPO decision includes express findings that there is: (1) no  
 12 evidence that Plaintiffs “ever offered to sell the disputed domain name” to Defendant,  
 13 (2) no evidence that Plaintiffs “acquired the disputed domain name to prevent  
 14 [Defendant] from having it, (3) no evidence that Plaintiffs “acquired the disputed domain  
 15 name with an intent to disrupt [Defendant’s] business,” and (4) no evidence that  
 16 Plaintiffs “intended to attract consumers by confusing them about their relationship with  
 17 [Defendant’s alleged] mark.”

18      39. Despite this acknowledged lack of evidence of bad faith, the WIPO panelist  
 19 improperly speculated that Plaintiffs purchased the Domain Name from Mr. Lindell with  
 20 the “hopes of selling it to one of the other VOCL trademark owners” and “may have”  
 21 registered it “with the hopes of selling it to [Defendant] who already had publicly  
 22 expressed it [sic] strong desire to acquire the disputed domain name...”

23      40. Based on these false assumptions, and despite a lack of any actual evidence of  
 24 bad faith, the WIPO panelist concluded that “based on a holistic assessment of all of the  
 25 evidence” in the case, Plaintiffs did act in bad faith.

26      41. The panelist further speculated that Mr. Monster’s purchase of the Domain  
 27 Name for significantly less than the amount Mr. Lindell had paid for it only a few days  
 28 earlier supported “an inference that” they were “attempting to cleanse the bad faith that

1 was attached to the disputed domain name by changing the ownership of the disputed  
 2 domain name.” The decision doesn’t offer any explanation as to why Mr. Lindell’s  
 3 decision not to use the name VOCL doesn’t, by itself, completely explain the decreased  
 4 value of the Domain Name to him.

5       42. In sum, there was no valid basis for the panelist to conclude that Plaintiffs  
 6 registered or used the Domain Name in bad faith—which they did not—and the WIPO  
 7 decision was improper for that reason alone.

8       43. At no time did Plaintiffs trade upon or use Defendant’s alleged trademark for  
 9 the business of monetizing domain names or any other purpose.

10      44. At no time did Plaintiff register or use the domain name VOCL.COM in “bad  
 11 faith” as defined by 15 U.S.C. § 1125.

12      45. Due to the impending transfer of the Domain Name to the Defendant  
 13 pursuant to the decision by the WIPO Panel, Plaintiffs are now forced to bring this action  
 14 to protect their rights. Plaintiffs have had to retain counsel and to incur substantial fees  
 15 and costs to bring this suit.

16      46. Because WIPO has directed that the VOCL.COM domain name be transferred  
 17 to Defendant, this Court has jurisdiction under 15 U.S.C. §1114(2)(D)(v) to determine  
 18 whether Plaintiffs’ registration and use of VOCL.COM is unlawful under the ACPA and  
 19 the Lanham Act.

20      47. Based on the facts set forth herein, an actual controversy has arisen and now  
 21 exists between Plaintiffs and Defendant regarding whether or not Plaintiffs’ use of the  
 22 term VOCL.COM as a domain name infringes Defendant’s trademark or constitutes  
 23 trademark dilution or can serve as the basis for any relief under any Federal or state law.

24      48. Plaintiffs has never sold, transferred, or trafficked in the Domain Name.

25      49. At all times, Plaintiffs utilized the Domain Name in a bona fide manner for  
 26 bona fide purposes.

27      50. Plaintiffs have never had any intent to divert consumers from Defendant’s  
 28 online location to a site accessible under the Domain Name that could harm the goodwill

represented by the mark, nor did they do so, either for commercial gain or with the intent to tarnish or disparage Defendant's alleged mark, by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site.

51. Plaintiffs' use of the Domain Name has been lawful, and has not infringed upon the mark of the Defendant.

52. Plaintiffs did not provide material and misleading false contact information when applying for the registration of the Domain Name.

53. Plaintiffs did not fail to maintain accurate contact information with respect to the Domain Name or with respect to any other domain name.

54. Plaintiffs' use of VOCL.COM is a fair or otherwise lawful use of the term. Under the ACPA, the trademark owner has the burden of proof that the domain-name registrant used, registered, or trafficked in the domain name with the bad-faith intent profit from the trademark. 15 U.S.C. §1125(d)(1)(A). As none of the links on the VOCL.COM parked page target the Defendant's alleged trademark, the use of the Domain Name was lawful.

55. Because of the actions of Defendant, and its claims of trademark infringement and dilution, Plaintiffs faces losing valuable rights in the Internet domain name.

## **V. First Cause of Action**

## **Declaratory Relief - 28 U.S.C. § 2201**

No Violation of Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d)

56. An actual controversy exists about whether Plaintiffs should be entitled to the domain name VOCL.COM under the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d).

57. The Anticybersquatting Consumer Protection Act provides a cause of action for a registrant whose domain name has been suspended, disabled, or transferred under which the registrant may sue for a declaration that the registrant is not in violation of the ACPA and for injunctive relief, including the reactivation of the domain name.

58. Under 15 U.S.C. §1114(2)(D)(v), a registrant who is threatened with the loss

1 of their domain name under the UDRP is provided with a cause of action to seek an  
2 injunction returning the domain name if the registrant can show that the registrant is in  
3 compliance with the ACPA.

4       59. Defendant does not have any exclusive use of the mark nor did it have such a  
5 right at the time Plaintiff registered the Domain Name.

6       60. Plaintiffs did not register the Domain Name with the bad-faith intent to profit  
7 from the goodwill of Defendant's trademark, as "bad faith" is defined in the ACPA.

8       61. Plaintiff is entitled to have the unencumbered use of the domain name  
9 VOCL.COM and to have all suspensions or transfers of the Domain Name terminated  
10 and prohibited.

11       62. As a direct and proximate result of Defendant's allegations to WIPO, Plaintiff  
12 has been and will continue to be damaged through his inability to use the Domain Name.

13       63. Unless this Court issues a Declaratory Judgment that Plaintiff is entitled to  
14 maintain registration of the domain name VOCL.COM, the transfer of the Domain Name  
15 to Defendant will damage Plaintiff irreparably. Plaintiff has no adequate remedy at law.

16       64. Defendant's acts make this an exceptional case under 15 U.S.C. §1117(a), and  
17 Plaintiff is thus entitled to an award of attorney's fees and costs.

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2                   **VI. Second Cause of Action**  
3                   **Declaratory Relief – 28 U.S.C. § 2201**  
4                   **No Violation of Lanham Act, 15 U.S.C. § 1114(a)**

5         65. An actual controversy exists about whether Plaintiffs should be entitled to the  
6 domain name VOCL.COM under the Lanham Act.

7         66. Plaintiffs' and Defendant's legal interests are adverse and create a present  
8 threat of litigation.

9         67. Plaintiffs' use of the Domain Name is not likely to cause confusion or mistake,  
10 or deceive as to the affiliation, connection, or association of Plaintiffs with Defendant, or  
11 as to the origin, sponsorship, or approval of Defendant.

12         68. Defendant's acts make this an exceptional case under 15 U.S.C. § 1117(a), and  
13 Plaintiffs are thus entitled to an award of attorney's fees and costs.

14  
15                   **VII. Third Cause of Action**  
16                   **Declaratory Relief – 28 U.S.C. § 2201**  
17                   **No Trademark Dilution of Lanham Act, 15 U.S.C. § 1114(a)**

18         69. An actual controversy exists about whether Plaintiffs should be entitled to the  
19 domain name VOCL.COM under the Lanham Act.

20         70. Plaintiffs' and Defendant's legal interests are adverse and create a present  
21 threat of litigation.

22         71. Defendant's alleged mark does not qualify for protection against trademark  
23 dilution or tarnishment, as it does not qualify as a "famous mark" as that term is used in  
24 15 U.S.C. § 1125(c)(1).

25         72. Additionally, Plaintiffs' registration and use of the Domain Name is not likely  
26 to cause dilution by blurring because there is no risk of an association arising from the  
27 similarity of the Domain Name and Defendant's alleged mark that impairs the  
28 distinctiveness of Defendant's alleged mark.

29         73. Additionally, Plaintiffs' registration and use of the Domain Name is not likely  
30 to cause dilution by tarnishment because there is no risk of an association arising from the

1 similarity of the Domain Name and Defendant's alleged mark that would harm the  
 2 reputation of Defendant's alleged mark.

3       74. Plaintiffs' registration and use of the Domain Name is a fair use under 15  
 4 U.S.C. § 1125(c)(3)(A) which is not actionable as dilution by blurring or dilution by  
 5 tarnishment.

6       75. Defendant's acts make this an exceptional case under 15 U.S.C. § 1117(a), and  
 7 Plaintiffs are thus entitled to an award of attorney's fees and costs.

### 8                   **VIII. Prayer for Relief**

9       Plaintiffs Robert W. Monster and Anonymize, Inc. respectfully request the  
 10 following relief:

- 11       1. An order directing the domain-name registrar, Epik Inc., to take all action  
 12 necessary to enable the domain name VOCL.COM; to reactivate the Domain  
 13 Name; to discontinue any suspension of the Domain Name; and to refrain  
 14 from transferring the Domain Name from Plaintiff to Defendant;
- 15       2. A judgment declaring that Plaintiff's registration and use of the domain name  
 16 VOCL.COM neither infringes Defendant's trademark, nor dilutes the  
 17 trademark in any manner, nor constitutes a violation of any Federal or State  
 18 law;
- 19       3. A judgment declaring that Plaintiffs may continue to use and enjoy the domain  
 20 name VOCL.COM without interference of any type by the Defendant;
- 21       4. A judgment, order, or injunction enjoining Defendant from interfering with or  
 22 challenging Plaintiffs' registration, possession, or use of the domain name  
 23 VOCL.COM;
- 24       5. A judicial declaration that this is an exceptional case under the Lanham Act  
 25 because Defendant initiated the UDRP with the bad-faith intent to use the  
 26 legal system to steal the Domain Name from Plaintiffs;
- 27       6. An award of Plaintiffs' reasonable attorney's fees and costs incurred in  
 28 bringing this action; and

7. Such other, further, and different relief as the Court may deem just and proper under the circumstances.

Dated: August 30, 2021

Respectfully Submitted,

NEWMAN DU WORS LLP

s/ Derek Linke

s/ Derek A. Newman

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## Attorneys for Plaintiffs

# Robert W. Monster and Anonymize, Inc.

## Demand for Jury Trial

Under Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs Anonymize, Inc. and Robert W. Monster respectfully request a trial by jury of all issues so triable.

Dated: August 30, 2021

Respectfully Submitted,

## NEWMAN DU WORS LLP

s/ Derek Linke

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